

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

| | | |
|---------------------------------------|---|-----------------------|
| EBAY INC., and MICROSOFT CORPORATION, |) | No. C 10-4947 CW (LB) |
| Plaintiffs, Counterclaim-Defendants, |) | |
| vs. |) | |
| KELORA SYSTEMS, LLC, |) | |
| Defendant, Counterclaim-Plaintiff. |) | |
| _____ |) | |
| CABELA’S INC., |) | No. C 11-1398 CW (LB) |
| Plaintiff, Counterclaim-Defendant, |) | |
| vs. |) | |
| KELORA SYSTEMS, LLC, |) | |
| Defendant, Counterclaim-Plaintiff. |) | |
| _____ |) | |
| KELORA SYSTEMS, LLC, |) | No. C 11-1548 CW (LB) |
| Plaintiff, Counterclaim-Defendant, |) | |
| vs. |) | |
| |) | |
| |) | |

1 TARGET CORPORATION;)
 2 AMAZON.COM, INC.; DELL, INC.;)
 3 OFFICE DEPOT, INC.; NEWEGG INC.;)
 4 COSTCO WHOLESALE)
 5 CORPORATION; HEWLETT-)
 6 PACKARD COMPANY; AUDIBLE,)
 7 INC.; and ZAPPOS.COM, INC.,)
 8 Defendants, Counterclaim-Plaintiffs.)
 9 _____)

ORDER GRANTING MOTION FOR APPOINTMENT OF RECEIVER

Date:
 Time:
 Courtroom: 2, 4th Floor
 Chief District Judge: Claudia Wilken

10 Judgement Creditors eBay, Inc., Microsoft Corporation, Cabela’s Inc., Target Corporation,
 11 Amazon.com, Inc., Dell, Inc., Office Depot, Inc., Newegg, Inc., Costco Wholesale Corporation,
 12 Hewlett-Packard Company, Audible, Inc. and Zappos.com, Inc. move for appointment of a
 13 receiver. No opposition to the motion has been filed. The Court takes the motion under
 14 submission on the papers. Having considered the papers filed in support of the motion, and for
 15 good cause appearing, the Court GRANTS the motion for appointment of a receiver.

16 IT IS HEREBY ORDERED that under C.C.P. § 708.620, C.C.P. § 564, C.C.P. § 564.8,
 17 and otherwise under FRCP 68, Michael Warda, Esq., shall be appointed as and for receiver of the
 18 trademark, patents, copyrights, and domain name, which are listed below:

Trademarks:

- 19 A. STEP SEARCH, Serial Number: 74735136.
- 20 B. KELORA DIAMOND SEARCH [not registered with the USPTO].
- 21 C. COMMERCE SUITE [not registered with the USPTO].

Patents:

| | <u>Country</u> | <u>Patent No.</u> | <u>Title</u> |
|----|---------------------------|-------------------|------------------------------------------------------------|
| 22 | A. United States | 5,715,444 | Method and system for executing a guided parametric search |
| 23 | B. United States | 6,327,588 | Method and system for executing a guided parametric search |
| 24 | C. United States | 6,275,821 | Method and system for executing a guided parametric search |
| 25 | D. United States | 5,983,219 | Method and system for executing a guided parametric search |
| 26 | E. European Patent Office | 0792 491 | Method and system for executing a guided |
| 27 | | | |
| 28 | | | |

| | | | |
|---|----------------------------------------|-----------|------------------------------------------------------------|
| 1 | | | parametric search |
| 2 | F. Canada | 2,202,481 | Method and system for executing a guided parametric search |
| 3 | G. United States Patent Danish, et al. | 7,885,956 | Display and search interface for product database |
| 4 | | | |
| 5 | H. United States Patent Danish, et al. | 8,209,327 | Display and search interface for product database |

6 ***Domain Name:***

7 KELORA.COM.

8 UDIAMONDSEARCH.COM.

9 ***Copyright:***

10 Copyright for contents of domain name under the title of “KELORA.COM.” [Not
11 registered with the United States Copyright Office.] The copyright is held in the name of Kelora
12 Systems, LLC.

13 IT IS FURTHER ORDERED that all rights to payment of money, accounts, accounts
14 receivable, funds due under any patent license, or similar right under C.C.P. § 708.510(a) in which
15 any and all funds which are due would be assigned and paid to Michael Warda as and for receiver
16 thereof. These rights to payment of money include, but are not limited to, licensing fees,
17 maintenance fees, annual fees, renewal fees, and other charges arising out of or based on the use
18 of a software, digital, or other product owed by the following obligors:

| 19 | Original | | | | |
|----|-----------------|-------------------------------|----------------------------|-------------|-----------------|
| 20 | Buy Date | Name | Latest Product Used | Type | Comments |
| 21 | 5/23/2000 | 3M | CommerceSuite 4.5 | Licensed | Current |
| 22 | 4/15/2000 | Honeywell International, Inc. | CommerceSuite 4.5 | Licensed | Current |
| 23 | 4/5/2000 | Hubbell | ProductServer 3.1 | Licensed | Current |
| 24 | 7/31/2000 | IDEC Corporation | CommerceSuite 4.5 | Licensed | Current |
| 25 | 3/30/2001 | Lincoln Electric Company | CommerceSuite 4.5 | Licensed | Current |
| 26 | 5/31/2002 | SICK, Inc. | CommerceSuite 4.5 | Licensed | Current |
| 27 | 12/29/1999 | Zilog | ProductServer 3.1 | Licensed | Current |

28 These funds may arise out of and are based upon any and all rights to payment of money, claims, causes of action, payment streams, revenues, or licenses which arise out of any licensing, patents, or any claims of infringement thereof.

1 IT IS FURTHER ORDERED the Defendant KELORA SYSTEMS, LLC is restrained from
2 the sale, alienation, mortgage, lien, encumbrance, advancement, cashing or negotiation, or receipt
3 or exploitation of any of the accounts under C.C.P. § 708.520(a).

4 IT IS FURTHER ORDERED that Defendant KELORA SYSTEMS, LLC shall turn over
5 any and all documentary evidence of any of the accounts, including but not limited to, any checks,
6 drafts, money orders, deposits, deposit accounts, books, records, papers or files, listing of
7 accounts, accounts receivable ledgers or journals, to and on behalf of the UNITED STATES
8 MARSHAL, NORTHERN DISTRICT OF CALIFORNIA, 450 Golden Gate Avenue, Rm. 20-
9 6888, San Francisco, CA 94102, ATTN: CIVIL ENFORCEMENTS, pursuant to the provisions of
10 C.C.P. §699.040(a).

11 IT IS FURTHER ORDERED that the following are the proposed receiver's duties herein:

12 A. The receiver shall be entitled to sell, auction, convey, transfer, license, and sublicense
13 all of the trademarks, patents, copyrights, accounts and accounts receivable, and domain name.

14 B. The receiver may conduct a private or public sale, subject to further order of this court,
15 and to the highest bidder, including a credit bid by Judgment Creditors, to sell the trademarks,
16 patents, copyrights, accounts and accounts receivable, and domain name.

17 C. The receiver may establish one or more bank accounts to deposit any and all proceeds
18 thereof from the sale of the trademarks, patents, copyrights, accounts and accounts receivable, and
19 domain name.

20 D. The receiver may make, execute and deliver any types of applications, transfer notices,
21 notes, instruments, or other writings, for and on behalf of any purchaser, and/or conveyee of the
22 intellectual property therein, and to execute, make and deliver any and all writings required by the
23 United States Trademark and Patent Office, to facilitate the transfer thereunder of the trademarks,
24 patents, copyrights, accounts and accounts receivable, and domain name.

25 E. The receiver may be authorized, if necessary, to affix the name of the Defendant on any
26 documents which may be required by the United States Trademark and Patent Office, to facilitate
27 the transfer of the copyrights relating to the trademarks, patents, copyrights, accounts and
28 accounts receivable, and domain name from the Defendant to the successful buyer herein.

1 F. The receiver may retain the services of one or more attorneys, experts or consultants,
2 by which to aid and advise the receiver in the performance of the duties thereunder and appraise or
3 evaluate the trademarks, patents, copyrights, accounts and accounts receivable, and domain name.

4 G. The receiver may advertise and incur any expense for purposes of advertising the
5 intellectual property for sale, which would include the publication in Craig's List, online
6 activities, any newspaper of general circulation, any trade newspaper or magazine, or any other
7 activity by which to promote the sale thereunder of the trademarks, patents, copyrights, accounts
8 and accounts receivable, and domain name.

9 H. The receiver may take and receive all funds constituting the proceeds from the sale of
10 the trademarks, patents, copyrights, accounts and accounts receivable, and domain name, and
11 deposit the same in a receiver's account, pending further order of this court.

12 I. The receiver may conduct a credit bid for the benefit of the Judgment Creditors
13 thereunder for the sale of the trademarks, patents, copyrights, accounts and accounts receivable,
14 and domain name.

15 J. That the receiver shall be authorized to collect and receive payments due under an
16 assignment order under C.C.P. § 708.510(a), that such payments shall be deposited in the account
17 of the receiver herein pending further order of this court, that the receiver shall be entitled to
18 endorse any and all checks, drafts, warrants, instruments and notes in the name of the Judgment
19 Debtor, and deposit the same as applicable in a bank account, pending further order of this court;
20 that the receiver be authorized in good faith to negotiate any discount on any debt due the
21 Judgment Debtor, extend time for payment, accept or receive a compromise, or otherwise dispose
22 of any obligation due the debtor in the place of the debtor.

23 K. The court shall keep and retain continuing jurisdiction for the sale or liquidation of the
24 trademarks, patents, copyrights, accounts and accounts receivable, and domain name.

25
26 DATED: 6/20/2013



CLAUDIA WILKEN
CHIEF DISTRICT JUDGE